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DEPARTMENT OF TRANSPORTATION

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OFFICE OF THE SECRETARY

Guidance on Review and Approval of Public Charter Prospectuses

AGENCY: Office of the Secretary, Department of Transportation

ACTION: Guidance on Review and Approval of Public Charter Prospectuses

SUMMARY: The Department is publishing the following notice on new policies affecting the review and approval of public charter filings under 14 CFR Part 380 and related changes in the Department's enforcement policies.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Ave., S.E., Washington, D.C. 20590, (202) 366-9349.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

GUIDANCE ON REVIEW AND APPROVAL OF PUBLIC CHARTER PROSPECTUSES

NOTICE

The abrupt cessation of service by the public charter operator, Southern Sky Air & Tours, LLC d/b/a Direct Air, in March 2012, and its subsequent bankruptcy, resulted in the cancellation of numerous charter flights and disrupted the travel plans of thousands of consumers. In light of the Direct Air collapse, the Office of International Aviation's Special Authorities Division, in conjunction with the Office of Aviation Enforcement and Proceedings (Enforcement Office), has revised its policies regarding the review and approval of public charter prospectuses filed under 14 CFR Part 380 and the related enforcement policy.

A number of practices followed by Direct Air may have exacerbated consumer harm. Among these were Direct Air's contracting out of its reservations process to a third party, and its entry into direct air carrier contracts that were apparently limited to providing aircraft, crew, maintenance and insurance (ACMI). The public charter operator separately contracted on its own behalf directly with fuel suppliers and perhaps ground handlers. In addition, the charter operator collected consumer funds, accepting debit as well as credit card payments, through a voucher program in which consumers paid in advance for flights without selecting specific travel dates and without entering into the formal operator-participant contracts required by Part 380.

In the future, pursuant to the public interest responsibilities we have under 14 CFR 380.24, we will no longer approve public charter prospectus filings that do not, as part of the filings, contain:

- (1) A statement, in addition to that required under section 380.28(a)(1)(iii), confirming that the contracts between the public charter operator and the direct air carriers include the full cost of the direct air service; that is, contracts between the tour operator and the direct air carriers must be all-inclusive and cannot be ACMI (i.e., fuel or ground handling cannot be addressed in separate contracts between the public charter operator and a third-party vendor); and
- (2) A statement that the public charter operator will retain direct control of all passenger reservation records and will share those records with the direct air carrier to ensure that, in the event of a major disruption in the program as occurred with Direct Air, the direct air carrier would be able to identify and contact tour participants regarding returning flights, and to ensure that the charter operator can fulfill its obligation to provide appropriate cancellation notices to those with reservations more than 10 days in the future; if a public charter operator contracts with a third-party for reservations service, a duplicate, current copy of all reservations records must be accessible to the tour operator at all times.

In addition, to ensure that consumers not paying in cash receive the protections of the Fair Credit Billing Act (15 U.S.C. 1601 et seq.), public charter operators may accept payment, as the explicit language of section 380.31 currently provides, only by credit card, but not by debit card.¹ The Department will consider exemptions to this requirement provided it can be assured that debit card issuers, their merchant banks and credit card/debit card processors, will provide the same chargeback protections to those using debit cards as credit card users receive under the Fair Credit Billing Act.

Finally, as a matter of enforcement policy, the Enforcement Office will consider any voucher program such as that offered by Direct Air a *per se* violation of 14 CFR Part 380, and if that office discovers such a program it will pursue immediate enforcement action. A voucher

¹ In a future rulemaking, the Department may address the use of debit cards in purchasing charter air transportation.

program that accepts consumer funds without the consumer entering into a contract with specific flight dates is not the equivalent of the operator-participant contract required under Part 380 and does not provide protection of consumer funds under the escrow provisions of section 380.34.

This revised policy regarding approval of charter prospectuses will take effect 30 days from the date of this notice. Prospectuses filed after that date will not be accepted without the supplemental statements, outlined above. The Enforcement Office intends to undertake enforcement action, where appropriate, if it obtains evidence of violations of commitments made in those statements, or of the acceptance of debit purchases, or of sales initiatives such as the voucher program described above. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

An electronic version of this document is available at <http://www.regulations.gov>

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Dated: November 13, 2012